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# *The Commonwealth of Massachusetts*

## *Department of Public Safety*

*Architectural Access Board*  
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Thomas G. Gatzunis, P.E.  
Commissioner

Thomas P. Hopkins  
Director

### **Board Meeting Minutes – September 22, 2014**

#### **21<sup>st</sup> Floor – Conference Room 1**

#### **Present Board Members:**

- Walter White, Executive Office of Public Safety Designee, Chair (WW)
- Myra Berloff, Massachusetts Office on Disability Director (MB)
- Raymond Glazier, Executive Office on Elder Affairs Designee (RG)
- Andrew Bedar, Member (AB)
- George Delegas, Member (GD)

and

- Kate Sutton, Program Coordinator/Clerk for Proceedings (KS)
- Thomas Hopkins, Executive Director (TH)
- Deirdre Hosler, Deputy General Counsel (DH)

#### **Members Not Present:**

- Carol Steinberg, Member (CS)
- Diane McLeod, Vice Chair (DM)

- Meeting began at 9:00 a.m.

#### **1) Discussion: Roll Call**

WW - Call to order all but Diane McLeod and Carol Steinberg present

#### **2) Incoming: Acton Town Hall, Temporary Offices, 33 Nagog Park, 2<sup>nd</sup> Floor, Acton (V14-241)**

- TH - EXHIBIT – variance application and supplemental information
- temporary office space for some town offices
  - entry door does not provide 18" clearance and propose magnetic hold open

*MB* - grant as proposed  
*RG* - second – carries unanimously

TH - elevator cab size, 46.5” wide by 52.5” deep

*MB* - grant as proposed  
*AB* - second – carries unanimously

TH - standard women’s stall size 60” by 70.5”

*AB* - grant as proposed  
*RG* - second – carries unanimously

3) Incoming: LaFuici Dental Office, 11 East St., Middleton (V14-236)

TH - EXHIBIT – variance application and supplemental information  
- affidavit provided stating that it is employee use only at the second floor  
- was reviewed by ILC of North Shore and Cape Ann  
- no variance really needed based on the affidavit

*RG* - accept the affidavit and require recorded with the local registry of deeds within 60 receipt of the decision of the Board  
*AB* - second – carries unanimously

4) Incoming: Pioneer Valley Performing Arts Charter Public School, 15 Mulligan Dr., South Hadley (V14-240)

TH - EXHIBIT – variance application and supplemental information  
- reconstruction and addition, spending over 30%  
- goal of the project is to create a gathering space for the students and faculty, a full size stage, and a dance class space separate from the main school  
- seeking variance for alternate stage access, with route outside of the venue

*MB* - deny, new construction  
*AB* - second – carries unanimously

5) Incoming: Two Three Zero, 230 Somerville Avenue, Somerville (V14-242)

TH - EXHIBIT – variance application and supplemental information  
- seeking two variances  
- one variance for the corner of the landing (24.4.3)

*MB* - grant as proposed  
*RG* - second- carries unanimously

TH - request for time to build the ramp  
- permit was issued for the work in the event space to create the accessible features at the interior, but issue of access into the space not dealt with until final inspection

*MB* - grant a 6 week time variance, by November 1, 2014  
*AB* - second – carries unanimously

6) Incoming: Nashawannuck Pong Promenade, Williston Avenue and Cottage Street, Eathampton (V14-231)

TH - EXHIBIT – variance application and supplemental information  
- constructing a cantilevered boardwalk, and three gangways to docks  
- gangways will have slopes of 10.9%, 12% and 10.4%, one gangway will also have a run of 42 feet instead of 30 feet (24.2.1 and 24.2.2)

MB - if the dock is further out wouldn't the slope be better  
- why such steep slopes

TH - engineering issue

AB - whoever designed the boardwalk did not account for the slopes of the gangways

MB - just want one compliant gangway

*MB - continue and require that the petitioners submit a design showing at least one compliant gangway, if not more; may not pull permits for this work until the matter is rectified before the Board*

*AB - second – carries unanimously*

7) Incoming: Siasconset Casino Fitness Building, 10 New Street, Siasconset (V14-238)

TH - EXHIBIT – variance application and supplemental information  
- partial build-out of the basement for overflow exercise equipment and storage  
- work performed jurisdiction under 3.3.1a  
- seeking a variance for the lack of vertical access to the basement space  
- only a portion of the basement is open to the public  
- it appears as though there is a stepped entry into the building  
- the plans also show a notation about adding a walkway to the front entrance

*GD - grant on the condition that the pathway to the entrance at a slope of 1:20 is provided to the main entrance of the building*

*MB - second - carries unanimously*

8) Incoming: St. Spyridon Food Bank, 102 Russell St., Worcester (C14-069 & V14-237)

TH - EXHIBIT – variance application and supplemental information  
- complaint was filed because work in 2010 was done and steps were created to the front entrance  
- variance to leave the entrances as is, with a route to the rear or side entry proposed

*RG - find in favor of the complainant*

*MB - second – carries unanimously*

*MB - continue for more information regarding the accessible route to and into the building*

*AB - second – carries unanimously*

*MB - submit by October 14, 2014*

9) Incoming: Boston Public Library, Johnson Building, 230 Dartmouth Street, Boston (V14-219)

TH - EXHIBIT – variance application and supplemental information

**Carol Steinberg, Member (CS) – now present (CS)**

TH - significant renovation project, choosing to put in a vertical wheelchair lift to serve the auditorium  
- house elevator only access the floor above, so lift proposed as means of access to the space which has never been accessible  
- other work going on throughout the building, which is selective work, so not over 30%

AB - *grant on the condition that the lift complies in full with 28.12.2*

MB - *second – carries unanimously*

**Brief Break – TH left the room**

10) Hearing: Commercial Building, 42 Merrimac Street, Newburyport (V13-276)

WW - called to order at approximately 10 a.m.  
- introduce the Board

Robert Finneran – Building Owner (RF)

William March – architectural designer for the building (WM)

Gary Evans, Evans Law and Associates (GE) – not testifying, just observing

WW - RF and WM sworn in  
- EXHIBIT 1 – AAB1-96  
- previously before the Board based on the addition to the building, triggering the requirements of full compliance  
- even though a new use, still a public space, so need to focus on why this change of use of the space is still impracticable to provide access to the space in question

RF - Packet of additional information

WW - accept as EXHIBIT 2

RF - gained a permit to build an addition onto an existing building in April of 2009  
- went through local level commissions and boards for over a year  
- did not understand the issue at first; now understand that this matter was supposed to come to the state level prior to the work being done  
- understand it was a self-created hardship  
- the building foundation was poured in 2009, but due to financial constraints did not continue the work until 2012  
- no complaints filed, brought the variance to the Board on my own  
- historic building, not changing any area of public access, still the original brick building  
- original proposal was to have the addition be the kitchen at the first floor and food storage at the basement level for a 16 seat restaurant  
- existing brick building, spent very little money  
- originally bought the building in 2008 and re-pointed the brick  
- have replaced 4 windows in the existing brick building and did some floor repairs in 2009  
- 2012 for the installation of the new windows  
- was unaware of the regulations

- did not spend much money to upgrade the commercial space; was thinking that it may be grandfathered in and that the permissions given by the local level agencies and boards were sufficient
- did ask the Board of Health about putting a lift into the building and bring them through the kitchen, but they refused to answer the question until the building work was completed
- was told that it would have more value as single-family dwelling
- went to the zoning board of appeals to request the change of use to a single-family dwelling, which was not encouraged and therefore not pursued
- putting a new doorway at the rear would use up 2/3 of the floor space at the rear
- there are also parking spaces at the rear of the building (18'x22'); 2 parking spaces, which are required by zoning
- the restaurant idea was abandoned
- the property was put on the market for sale
- potential buyer was to have a jewelry maker have her shop in the front of the building and her single-family dwelling at the rear addition space
- does sell most of her jewelry on the internet
- she does want a storefront that is open to the public, but the majority of her sales apparently come from the internet
- she does know about the issue with the Board
- have entered into a purchase and sales agreement, which is conditional upon resolving this matter before the door
- this is the only issue with the sale of the building
- building is currently unoccupied without utilities
- not a professional builder
- proposal is to have a side entrance to her residence, with a locked door between the residence and the shop
- all access will be thru the front door, which has two steps; no other public space
- has a letter of support from the Newburyport Disability Commission and the Historic Commission
- floor cannot be brought down to street level due to the existing timbers and the historic nature of the building
- certified plot plan, certified surveyor, scale plot plan

WW - accept the plot plan as EXHIBIT 3

RF - enlarged the plot plan

- very busy roadway with access to the water
- there is no sidewalk at the side
- at three sides of the building, bordered by the plot line
- on the east side, there is an angled division, most narrow point at the corner of the brick building is 2'3" and 3'2"
- photograph of where the 2'3" worth of space, by the "for sale" sign
- submittal of CD with information

WW - accept CD as EXHIBIT 4

RF - pictures of the building at lunch hour; showing heavy traffic, mostly industrial

- building across the roadway will be a 400+ seat restaurant, with most likely a large increase in deliveries
- therefore issue of public safety with building a sidewalk from the front or the rear to the side entrance would be a public safety issue

- again, front of the building is going to be jewelry business, and seeking a variance that only the front of the building be commercial use; and then if the use of the rear addition changes from residential to public use, then access would be required

- relief does not lessen accessibility, it is the same as it was before; it does not nullify the purpose of the regulations

- it is a unique piece of property, it is approximately 12' by 24'

- jurisdiction memo

WW - EXHIBIT 5, memorandum submitted by RF

RF - 3 years before the application was filed only the window work was done

- also argue full and fair cash value of the building based on square footage

- one building with separate businesses

WW - not the case of partial application since all one building

RF - but multiple uses within one building, since proposed as commercial and representation

WW - this partial application does not apply, since the work was done to create the addition, which triggered the requirement for full compliance with 521 CMR throughout the entire building, based on 3.3.2 of 521 CMR

WW - is there a second floor on the original building?

WM - the addition was to create a second floor above the existing brick building, and then second floor of the addition and first floor of the addition are at the same level; then basement level

WW - addition on a structure, still all one building; when the work was done, had the opportunity to make it accessible

- understand the issue since not familiar with the regulations and did not understand the requirements at the time

- but as stated, it is a self-create hardship

- perhaps close off the front of the building and make the business not open to the public

CS - no contingency in the purchase and sales about this issue before the Board

RF - there is a letter of intent, which recognizes the issue of the variance with the architectural access board exists

CS - created this addition without having a proposal for access

- would like to see affidavit from the proposed owner, that says that she will be taking up the entire space of the addition as her private residence

- so why not create access from a portion of the addition space to create access into the jewelry shop

RF - the kitchen is not installed, there is no plumbing even in yet

- it is just a studded interior structure

GD - no attempt to provide access in any of the designs submitted

- still nothing proposed as finalized design, with some sort of access

RF - coming with the argument of technologically infeasible

- based on three of the walls on the lot lines

GD - but could enter and provide access from interior

WM - entrance is at a half level in between the first floor and the basement level

GD - but no attempt at even looking at any sort of access, and since studded only, then a clean slate to work with

AB - had previously suggested to try to submit a plan for alternate access  
- argument is the lack of safety at the side of the building

MB - appreciate the dilemma, but the proposal that was initially brought to the board was to use more of the addition space as commercial space

- hired an architect to design the space and the space didn't consider accessibility and didn't propose an alternate access

- was hoping that the change from a larger commercial use to a smaller commercial use still has an obligation to create access into the space

- the addition could have been built with access at the beginning

- understand the elevation issues, but no way to create an accessible route was proposed

- you believe that there is no path of travel from the front of the building, from the primary commercial front entrance, to the side entrance

RF - yes

MB - and there is no way to create a path of travel from the sidewalk, and around the building to the entrance

RF - nor from any other entrance of the building can an accessible entrance be created

- the side entrance is really dangerous due to the adjacent road

- rear of the building is the lowest point and furthest from the first floor; and creating a rear entrance would create a loss of the two parking spaces and take away a significant portion of the interior of the space

CS - would the buyer right an affidavit stating that she will use the entire additional space?

RF - yes, I believe that she will do that and can submit that

CS - *take the matter under advisement*

RG - *second – carries unanimously*

### **DH and CS left the room**

11) Hearing: Schneider Center and Billings Hall, 106 Central Street, Wellesley (V14-141)

WW - called to order at approximately 11 a.m.

- introduce the Board

Amy Prange, Colliers International (AP)

Pete Zuraw, Wellesley College Assistant VP for Facilities and Program Management (PZ)

Paul McAndrew, Wellesley College Project Manager (PM)

WW - all sworn in  
- EXHIBIT 1 – AAB1-45

PZ - ongoing project at Wellesley College

### **CS now present**

PZ - project to address some long standing physical and programmatic issues with the existing buildings  
- blue buildings on AAB3 have been done in the past years of work  
- some buildings meet “the spirit” of the requirements, but do not comply in full  
- creation of some additional space for office space which needed work for functionality and

accessibility

- thought that the project was two separate buildings, but found that it is actually considered as one building

- there is a link building between the buildings, which was the reason why the thought was that the buildings were separate

AP - AAB24, shows the three sections of the building; Schneider center is white (built in 1904 as performance hall), Billings Hall (built in 1880’s), link building built in 1960’s

- the link building does not line up with the floor levels of the two adjacent buildings  
- seeking a five year time variance for all of the accessible upgrades that will occur within the link building

- need time to design the upgrades and find time for swing space and determine what else would be required

PZ - may have to shift departments around and move spaces out of the building

AP - 13 areas of the code where seeking 5 years  
- variances for 521 CMR 6, 20, 24, 25, 26, 27, 28, 29, 30, 32, 37, 39, 41

WW - spending is \$5.6 million

AP - that is what was spent to renovate the Schneider Center

WW - so that work on the Schneider Center triggered the requirement for the Hall and the Link

MB - but Schneider is fully accessible and code compliant?

PZ - yes

WW - what is the intention for five years?

PZ - need to redirect resources and need to determine swing spaces  
- have not quite figured out what will work in the Billings Hall, since the required work will most likely reduce the office space greatly

- \$80 million worth of work displaces student hall and faculty, which is scheduled to start within the year

- the year after that is another residence hall project

- and after that the science building will be renovated

- 117 faculty and 450 students will be affected over the three years of those proposed project

MB - need to figure out which variances will be compliant after 5 years and which are outright variances



AP - AAB25-28 are existing floor plans of the building  
- the first variance is for 28.12.1e for a wheelchair lift; AAB 5 is the ramp option  
- noncompliant ramp may be more feasible than a wheelchair  
- can still be 1:12, but the width of the ramp would be 3" wide and only 2' 6" clear between the handrails

GD - can't make the stair wider?  
PZ - no, because of structural issues below

MB - 30" clear width is tough to navigate for 22' of length  
- typically we prefer ramps, but this may be tough

PZ - lift takes up less space, but obviously the ramp is less maintenance

MB - but less than 36" between handrails is very tough to navigate, especially if the person uses a service dog or if a person is in a larger wheelchair

AP - also looked at a steeper slopes

MB - but the narrowness of the ramp remains, because of the need for the egress stairs  
- what type of lift?

PZ - vertical lift

AP - AAB29

*MB - grant the use of the compliant vertical wheelchair lift, in lieu of the proposed noncompliant ramp at the first floor link*

*GD - second – carries unanimously*

AP - AAB31 is next request

CS - what is the use of this link building?

PZ - waiting area and lobby area  
- there are two offices at the first floor with limited access  
- there is a radio station at the basement level  
- not the nicest place to hang out, the students probably prefer Schneider since it was renovated

AP - lower level of link building, transition from link lobby to the link lounge, compliant ramp would take up the majority of the existing space  
- AAB4 is the proposal for a noncompliant ramp  
- ramp is 3' 2" and 2' 8" clear between the handrails; with a 1:8 slope, instead of the required 1:12

WW - could the ramp be made wider, except for that pinch point between the load bearing walls

MB - 1:8 slope is too steep

AP - AAB31, is the lift proposal

*MB - motion to grant the use of a vertical wheelchair lift at the link lower level (location 2)*

*GD - second – carries unanimously*

AP - basement link upper level to the radio station lounge

MB - location use of floor

PZ - would have to install a side mounted lift because of the change in level  
- have talked about moving the radio station, but it has been in this basement location for many years

CS - if denied request for 5 year request, then how fast could it be done

MB - if it is part of major?

PZ - it is a club

MB - summer camps also use all of the facilities

PZ - radio station is not part of the summer programs

WW - what about a ramp down into the space and rearranging the furniture

PZ - storage around the edges of the building are for music storage (vinyl)  
- and the center couches and chairs are for meeting spaces for the radio station  
- has not been an issue, since Wellesley does not have a very accessible campus presently, which is part of the reason for the current work proposals

*MB - grant a variance for the installation of the vertical wheelchair lift within the five year timeframe, on the condition that there is an accommodation policy in place for the current lack of access.*

*GD - second – carries with CS opposed*

AP - location 4 for basement link lower level; 30” elevation change between studio waiting area and radio station lounge

- propose wheelchair lift on the stair to provide an accessible route between the lounge and the studio waiting area

AB - lift would be an incline lift or vertical?

PM - could do an incline lift, but could also propose a vertical wheelchair lift

PZ - can submit a proposal for a vertical lift

*AB - grant the variance for the installation of a vertical wheelchair lift at location 4, in lieu of a ramp within the five year time frame, on the condition that the Petitioners submit a plan for the lift prior to the work commencing*

*CS - second – carries unanimously*

AP - Accessible route at the storage basement space at the corridor within the Billings building

CS - storage only?

PZ - storage and mechanical space

- there is some long range storage, but not an active storage space that is used on a regular basis

- the head clearance is only 7'8" along the corridor, as well as changes in level of 3-5" along the path of travel due to embedded pipes across the corridor

MB - *grant the variance for 20.1 for the lack of an accessible route in the Billings Basement*  
CS - *second – carries unanimously*

RG - *submit written policy about the use of storage at the basement level of billings*  
MB - *second – carries unanimously*

AP - AAB6, floors that will be accessible are in blue and red will not be accessible with the installation of the link building elevator  
- the lift up to the 4th floor would require cutting through the existing roof and creation of a dormer  
- the cost of compliance would be excessive without benefit  
- the student newspaper and the year book group meet here, but they can meet alternate locations if need be

WW - price for the elevator is \$508,879, with additional \$332,340 for the elevator to go to the fourth floor  
PZ - yes

CS - thought that student activities in general were held at the fourth floor

AP - just a meeting room

PZ - vaulted space with cubby space along the wall  
- it is an attic space with exposed materials

CS - concern with people not having the ability to meet in this special space

PZ - it will be a substantial amount of additional funds to create access to the space that is infrequently used

MB - *grant the variance for the lack of vertical access to the fourth floor and basement, on the condition that there is a written policy that is distributed to the students and disability services, so that the university will affirmatively move the program to an accessible space if a person unable to participate in the newspaper or yearbook at the fourth floor*

CS - *second – carries unanimously*

AP - public toilet rooms  
- shared toilet room at link basement, which will be renovated to create accessible stall within it  
- of the 7 in the facility, 3 will be accessible  
- 3 existing single user toilet rooms in billings and 1 in the link building that are not accessible and proposed to be maintained as such

CS - AAB39, looks usable?

PZ - only 5 foot wide by 5 foot deep

CS - route to accessible toilet rooms

AP - through the link building

PZ - would shift some offices around for any employees that would be using a wheelchair

MB - putting in blocking and grab bars in the walls is important, and changes the fixtures on the sink as well  
- unsure of height of the toilet and location of toilet paper

- but could add compliant features other than the clearance requirements for wheelchair users

*MB - grant on the condition that there are accessible features incorporated into the toilet rooms, such as grab bars, compliant toilet height and flush location, dispensers within reach ranges, and accessible fixtures at sink; and signage directing people to the fully accessible toilet rooms*

*CS - second – carries unanimously*

AP - AAB41, maneuvering clearances are 31.5” clear when open 90 degrees

- proposal is to replace all noncompliant door hardware, the cost to install auto opener at each of the 23 existing noncompliant doors would be an excessive cost

- meeting rooms at the first floor, and meeting rooms at the second floor, and a kitchen and lounge at the third floor of the Billings Hall

PZ - issue is with the maneuvering clearances of the doors

*CS - continue the discussion regarding the doors and doorways*

*GD - second – carries unanimously*

AP - three types of doors to discuss and then the 5 year time variance request

CS - any doors that may be able to be adapted?

WW - it is a structural issue

PZ - problem is the doorways themselves due to the historic nature of the doorways

- hallway is too narrow to make a turn into the doorways

WW - are there any doors that it would be of some benefit to spend the money on, and then perhaps submit that proposal by the next meeting

MB - another option is an off-set hinge to get a little more clear width

PM - some doors would work, but others would not benefit from off-set hinge

*CS - continue to have the Petitioner submit a proposal for modification of some doors to be submitted by October 28, 2014*

*MB - second – carries unanimously*

*CS - continue the discussion regarding the overall time request to be discussed at the November 3, 2014 meeting administratively*

*MB - second – carries unanimously*

### **Break for Lunch – TH Present, MB not present, all others present**

12) Hearing: Glass Factory Condos Parking, 169 Monsignor O’Brien Highway, Cambridge (C13-091)

WW - called to order at approximately 1 p.m.

- introduce the Board

Lisa Hemmerle, Complainant (LH)  
Ralph Moore, Barker Management (RM)  
Richard Tweedy, Barker Management (RT)  
Matthew Gaines, Attorney for owner (MG)  
Mariah Frank, Cambridge Human Rights Commission (MF) – observing  
Mark Dempsey, Compliance Officer for the Board (MD)

WW - all sworn in  
- EXHIBIT 1 – AAB1-34

LH - thank you for your time  
- when moved into the property in November, had been working with the broker to let them know of the need for a space switch  
- was told that not allowed to request the space swap for the parking space, but was told at the time (prior to finalizing the purchase) could not request a space swap since not an owner  
- once bought the property requested the space swap before the condo association board  
- trying to get a reasonable accommodation for a space swap for a parking space closer to the building

MG - AAB23 is the parking layout  
- complainant has parking space 73  
- there are 4 accessible parking spaces that have been deeded to building owner by the developer, with an exclusive use easement for these parking spaces  
- spaces 48, 49, 51 and 52 are already deeded spaces  
- the proposed additional spaces are outlined on the plan as well

WW - do the owners of those spaces that are using them have the need for an accessible space?

MG - no  
- developer sold the spaces without regard for the need for accessible parking spaces; nor was there planning for the need for additional parking spaces

MG - when the property manager first received the request, notice was sent out to all owners and only received one response for a space swap from the owner of space 67, another exterior space

CS - developer was supposed to hold spaces for access

MG - interior garage space is more valuable than the exterior spaces, and all owners of the outlined parking spaces did not agree to a space swap

CS - *find in favor of the complainant for the reported violation of 521 CMR 10.3*

RG - *second – carries unanimously*

CS - when you bought it, did know the situation

LH - the issue with buying any of the properties in Boston or Cambridge, is that there is no way to talk about the associated parking spaces; it had to be done thru the realty brokers  
- unfortunately couldn't talk to the condo board until the next available board meeting of the condo association board; finalized purchase and sales on the 8<sup>th</sup> and went to the meeting on the 14<sup>th</sup>  
- I do own the space as part of the unit, as it was sold  
- my unit is an accessible unit, without an accessible parking space associated with it  
- one of the spaces needs to be able to be used in conjunction with the accessible unit

- the X'ed off spaces have been found to not be feasible due to the location and the adjacent concrete pillars

MG - above the bike rack, adjacent to space 34, is a large ventilation unit; cannot move the spaces down due to the ventilation unit and lack of clearance at that location

- if space was created in front of space 60, only 5 feet of space between the edge of the space and the adjacent column

TH - what is the width of the access aisles?

MG - 5 foot access aisles

- therefore no compliant van accessible parking spaces

- space next to 37

RT - space is only 6 feet wide and too narrow

CS - what about next to space 59?

RT - that is near the garage door opener

RG - any cash incentive to swap offered?

MG - no

RG - represents many complexes and have seen contingencies in purchase and sales agreements about accommodations

WW - no parking provided, and deeded away

- problem is with the developer that gave away the spaces, now the property managers issue since accepted the space

CS - issue is a swap of exterior space for interior space

MG - yes, would be a loss of value for the exterior parking space

TH - benefit to interior parking spaces for persons with disabilities

RT - did offer a garage remote to go into the building thru the garage; and also have her space shoveled out during snow storms, which no other tenant has the benefit of

- the building was built as apartments and then converted to condominiums

- cash offer is the only avenue that the property managers have at this point

MG - who bears the burden of the costs for a cash option space swap?

TH - the condo association most likely

- it is a public and common area taken care of by the condo association

MG - but if the association pays for the move, then the owner benefits from the association pays for the space change and the owner benefits when she sells her unit and the acquired interior parking spaces

LH - can go back to the original developer to sue for the lack of compliance with the regulations

MG - Cambridge Glass Factory, LLC

RT - once the units were conveyed, when they signed off, they signed off on liability with the developer

- CS - what was the option that was proposed?
- LH - did get the garage opener as an accommodation, but have been stuck in the snow, since during snow storms, cannot expect them to plow and shovel all the time  
- the space is a safety issue, since would be exiting the vehicle into the path of travel  
- also issue with going up into the garage and having to push 10 month old up/down the slight hill into the garage
- CS - slope of the entrance to the garage  
RT - 2 foot incline on the distance  
- about 60-70 feet in length
- GD - any visitor spaces?  
MG - garage not open to the public
- TH - request a to-scale drawing?  
RT - they are 8 foot spaces
- RT - three years ago, restriped the spaces
- KS - also need to deal with 521 CMR 25.1
- WW - only 1 of 4 entrances is accessible?
- MG - only one entrance, the main entrance; all of the other doors are exit doors
- TH - so not emergency egress only, alarmed doors
- MG - cannot enter these
- RT - the doors are locked
- KS - is there exterior door hardware?  
RT - yes
- KS - what about accessible means of emergency egress?
- MD - built in 1997 and renovate in 2004  
KS - ok, 2006 was when requirements for accessible emergency egress
- CS - use of the doors
- LH - just noticed that the doors had steps, so cited them for that reason  
- people do prop them open when they go out to walk their dogs
- MG - do not use the doors as entrances, are not supposed to use as entrance cannot control everything
- CS - *take the matter under advisement*  
RG - *second – carries unanimously*

## **MB now present**

13) Hearing: West Newton Cinema, 1296 Washington Street, Newton (C13-002)

WW - called to order at approximately 2 p.m.  
- introduce the Board

Carol Steinberg, recuses herself since she is familiar with the complainant

## **CS left the room**

Michael Grill, consumer (MG)

Jerry Rubin, Complainant (JR)

David Bramante, West Newton Cinema Co-Owner (DB)

Mark Dempsey, Compliance Officer for the Board (MD)

WW - all sworn in  
- EXHIBIT 1 – AAB1-15

JR - been a customer of the theater for the last 20 years  
- closest theater to our home, but since my wife Carol now uses a wheelchair, it is hard to utilize the theatre  
- in 1987 variance was granted to allow the lack of access to the upper levels, on the condition that the movies within the theater are shown and circulated to the accessible theater  
- two films about individuals with disabilities were only shown in the upper levels, and were only shown at this theater  
- no advertising about what was being shown at the accessible theater, and the phone lines were hard to get through and hard to follow  
- the accessible seating is in a blocked off area, where it is not feasible to provide a companion seat as well; have to be sat separately from my wife  
- this summer again noticed that the theater was not noting what was being shown in the accessible theater  
- newspaper advertisements from two different papers do not note which movies are being shown in the accessible theaters

WW - EXHIBIT 2 – newspaper ads

JR - not sure of when the movies will be in the accessible theaters, so cannot make advanced plans  
- request that the cinema owners submit financials if arguing financial hardship to comply with the requirements of the conditions

DB - Boston Globe advertisements, there was a lapse in the advertisements in June and July of this year  
- there is a recognizable problem with the advertising in the Globe  
- do have the history of the Globe advertisements

WW - accept the packet of Globe advertisements as EXHIBIT 3

DB - as far as other ways of notifying for accessibility



- outgoing announcements are difficult to go through, understand it is tedious to review the entire message, but the list of movies shown in the accessible theater are listed in the outgoing message
- the website notes the accessible showings of movies as well, submit pictures of the website

WW - accept as EXHIBIT 4 (pictures of website)

- DB - as far as the accessible seating location, was done by code at the time of construction and was designed by an architect and it was approved by the building department
- unsure of the issue with the inability of requesting companion seating, should be offered at all times

WW - what about the issue of rotating films?

- DB - always did have a policy of rotating films?
- movies usually start at the accessible theater and are then rotated up to the inaccessible theaters
  - can also do private showings at the accessible theater when requested
  - not a policy, since never been required, but can be done
  - I am in the building 7 days a week, have owned the theater since 1978
  - more than willing to accommodate people upon request
  - copy of weekly schedules

WW - accept the copies of weekly schedules as EXHIBIT 5

DB - this is a copy of the schedule that is also available at the theater

- MB - this listing (Exhibit 5), you know in advance what is going to be shown in each theater
- appreciate response to the complainant
  - not sure that showing the movie at an off-time would be beneficial
  - can you add the theater listings for the current and following week

- DB - yes, can do that in advance
- schedule Monday night for the week, and sometimes thru Thursday of the following week

GD - gated off areas?

- JR - separate raised area, above the rest of the theater
- have never requested a companion seat, so just assumed that would have to sit 3 feet below the accessible seating locations

- TH - at the time of the variance, the original application requested a variance based on the fact that the cost of compliance was excessive for the installation of an elevator
- the lack of consistency of the accommodation being provided is the reason for the possible need for access being created to all levels of the theater

- MG - do renovation work throughout the city
- have provided lifts in the past
  - the three upper theaters do have additional stairs

WW - what about vertical access being provide within the building

DB - would not be feasible to install a full elevator, but could do an incline wheelchair lift along the stairs

MB - would probably need to be vertical access with a vertical wheelchair lift, not an incline wheelchair lift

MG - vertical wheelchair lift is a feasible option

MB - no work done at the theater since 1987?

DB - no, nothing that required a permit

MB - the order talks about dispersed seating; not sure what is defined as dispersed in 1987

TH - AAB10 is the decision

MB - one accessible seating location in each theater

DB - there is one accessible seating location at each of the accessible theaters (two total)

*MB - require that a sign is posted at the accessible seating location (not within the line of sight to the movie) that lets people know that companion seating is available upon request*

*RG - second – carries unanimously*

MG - the current voicemail system is just one long message, which is hard to hear out

GD - can you speak with a live person?

DB - there is a direct line into the building and there is the separate voicemail line

*MB - would like a staff site visit to get photographs of the property*

*AB - second – carries unanimously*

*MB - require the submittal of a cost estimate to include a form of vertical access within the theater, submitted by January*

DB - the issue is with the paper delivery system for the ads

- the movies always rotate

JR - this is the third time this has been noticed, also the lack of notice in the papers

- would like just some advance notice of when movies are going to be in the accessible theater

*MB - so require submittal of costs estimates for vertical access and the creation of accessible seating in the inaccessible theaters, to be submitted by December 1, 2014*

*AB - second - carries unanimously*

TH - are there any floor plans available?

DB - can check with the city or my files

*MB - the listings of the movies that are showing in the accessible first floor theaters are posted on the website; and that the movies on the first floor are noted first in the theater voicemail*

*AB - second – carries unanimously*

### **Brief Break**

**All members again present**

14) Hearing: Natick Mews, 13 East Central Street, Natick (V14-156)

WW - called to order at approximately 3 p.m.  
- introduce the Board

Donald Havener, Cosentini Associates, code consultant (DH)

David Giuciano, Cube 3 Studio, architect (DG)

WW - both sworn in  
- EXHIBIT 1 – AAB1-20

DG - actual address, 82 North Main Street, Natick 01760  
- 150 new residential units between 6 buildings, 3 buildings are townhouse style, and 3 are in apartment style building  
- 138 units in apartment building, 38 units at top floor are loft levels that are accessible by staircases  
- 12 units are in the three townhouse buildings

DH - financial analysis for the reasons behind the hardship of creating access to the loft units

WW - Accept the cost breakdown submittal as EXHIBIT 2

DH - cost per residential unit  
- installation of a ramp or elevator within each units would be infeasible due to space constraints  
- for a vertical wheelchair lift would cost an estimated  
- installation of the lifts can block the space between the kitchen and the living room spaces

TH - section 9.4.2, in other housing settings and the buildings are rentals; can allow by right, the installation of a vertical wheelchair lift or LULA  
- are there elevators within the building?

DH - the remaining units are accessible since there is an elevator within the building, it is only the loft style units

DG - there are 38 loft style units

MB - there are no fully accessible loft style units proposed  
- they Group 2A units are required to be distributed across site

DH - only submitted representative sample of each building floor plate in general, can submit the Group 2A unit layouts if required

MB - first level of all three buildings, did not see any Group 2 units

DG - are proposing 8 Group 2A units, with one one-bedroom and one two-bedroom loft units

DH - the remainder of the Group 2A units are flats

MB - lofted unit and need a lift put in, what is the time lag for the lift installation and the rent accommodations made for those that will not have access to the upper floors  
- possibly 3-4 months for the lift installation, would the rent be pro-rated

DH - not sure what the end to end timeline is for the installation of the lift

- once the lease is signed, the leasee would be notified of the time frame and then don't believe that the leasee would be required to pay rent when they could not occupy the space

TH - 38 lifts?  
DH - potentially 38

TH - lifts would be provided upon request

MB - language would be in the lease?  
DH - yes

RG - will the lift be enclosed?  
DG - the lift comes with 42 inch high gate that surrounds the lift

GD - cost of lift?  
DH - would be paid for by the building owner and would be in lease language

*MB - submit plans that include a color-coded units showing group 1, group 2 and loft units, to be submitted by October 14, 2014*  
*CS - second – carries unanimously*

*MB - grant the variance to not install lifts in all of the loft units, but to have the language in the leases, that the lift will be installed upon request and in compliance with 28.12.2, at no cost to the tenant*  
*AB - second –*  
*CS - would like there to be a timeframe for the lift installation*  
*MB - lifts shall be installed within 90 days from the date of the request*  
*- motion carries unanimously*

*CS - posted on their website that there are 38 lofted units that can be made accessible*  
*MB - second – carries unanimously*

15) Discussion: Townhouse, 185 North Main Street, North Brookfield

TH - Kaffee Kang has done accessibility study for the building  
- asked for the plans and Kang asked the Board of Selectmen for the plans and was refused the ability to forward the plans to the AAB

*MB - subpoena the plans for the townhouse and order that no permits for any work at the townhouse be issued prior to the Board's review of the plans*  
*RG - second – carries unanimously*

16) Incoming Discussion: Wellesley College Field House, 106 Central St., Wellesley (V14-140)

TH - in June of 2014 they argued separate building  
- EXHIBIT – September 5, 2014 letter from Peter Zuraw noting that they are preparing a variance amendment to review the current needs of the building in regards to access  
- proposing submittal by November 14, 2014, instead of the originally ordered September 1, 2014

*MB - grant an extension of the submittal deadline to November 14, 2014 as requested*  
*CS - second – carries unanimously*

## **RG left the room**

17) Incoming: Newton City Hall, War Memorial Hall, 1000 Commonwealth Ave., Newton (V14-235)

- TH - EXHIBIT –variance application and supplemental information
- upgraded and proposing to use existing noncompliant ramp and entrance to the hall for the 12 months to the war memorial hall in the interim of the installation of an elevator to the hall
  - ramp slopes, curves, handrails

*AB - grant all as proposed*

*MB - second – carries unanimously*

18) Incoming: Berklee College of Music, 138-152 Mass. Ave., Boston (V14-239)

- TH - EXHIBIT –variance application and supplemental information
- jurisdiction is 3.3.1b
  - seeking variance for entry door facing Belvedere Street
  - \$148,000 to ramp that door
  - there is another entrance that is accessible on Mass. Ave.

*MB - grant as proposed*

*RG - second – carries unanimously*

19) Incoming: West Meadow Plaza, Unit 1720, 180 Milk Street, Route 9 & 135, Westborough (V14-234)

- TH - EXHIBIT –variance application and supplemental information
- Lazer Craze tenant space; entire first floor is accessible and the game play is the same at both levels
  - seeking variance for ramp relief for the ramps that are on the second floor of the arena (slopes)
  - asking relief for the mezzanine level

*CS - grant as proposed*

*AB - second – carries unanimously*

20) Incoming Discussion: Greater Plymouth Center for the Arts, 25 ½ Court Street, Plymouth (V14-042)

- TH - at August 11, 2014 meeting, granted time until 9/1/14 for the stage lift to be installed
- EXHIBIT – August 29, 2014 email from Robert Hollis, stating that the lift equipment did not fit once delivered
  - had to hire a company to lift the lift through the windows
  - originally to be brought before the Board on September 8<sup>th</sup>
  - EXHIBIT – September 12, 2014 email from Robert Hollis with pictures of the lift installed

*MB - accept the status report*

*AB - second - carries unanimously*

21) Incoming Discussion: New 4 family dwelling, 269 Emerson Street, South Boston (V13-321)

TH - EXHIBIT – August 26, 2014 from Doug Stephano, architect  
- in the process of construction the elevator company visited the site and found the space adequate, and now when they came back to the site, they found that the site was too small; proposed platform is 34” by 48”  
- wrap-around stairs and steel that they say cannot be modified

MB - three sides that can't be constricted, should be able to get 34” by 54”

MB - *deny the request and require that they submit a plan showing a lift with a clear platform size of 34” by 54”*

CS - *second – carries unanimously*

### **RG now present**

#### **22) Incoming Discussion: 6-13-19 Uncas Avenue, Oak Bluffs (V14-044)**

TH - originally accepted the installation of a LULA in lieu of a full elevator and required the submittal of plans  
- EXHIBIT – August 19, 2014 Sam Dunn wrote to the Board regarding the elevator installation  
- email stated that the LULA company no longer works on the vineyard and that the only company that will come out to the vineyard does not have a LULA that will fit the existing frame  
- August 21, 2014 response email to Mr. Dunn stated that the plan could not be changed and that a LULA was required  
- EXHIBIT – September 15, 2014 e-mail from Dunn requested amendment to use a vertical wheelchair lift instead

MB - *need submittal from three different companies regarding LULA installation*  
- *no second*

CS - *deny the request for the use of a vertical wheelchair lift instead of the previously required LULA, and to not allow the use of the second floor until there is a LULA installed, inspected and operational*

AB - *Second – carries unanimously*

#### **23) Incoming: New Guest House, 17 Broad St., Nantucket (V14-232)**

TH - EXHIBIT – variance application and supplemental information  
- spending over 30%  
- EXHIBIT – Plan dated 9/22/14, submitted Matt MacEachern  
- now proposing corner post vertical wheelchair lift at interior

MB - *grant on the condition that the lift platform is 42” by 60” and complies with all other requirements of 28.12.2*

CS - *second – carries unanimously*

24) Discussion: Nappi's Restaurant and Shop & Go Convenience, 370-374 Salem St., Medford (C11-004 & V12-196)

TH - EXHIBIT – September 17, 2014 submittal of pictures from Jean Thompson, Aide to Representative Paul Donato

MB - Mr. Nappi still did not produce this, went to his state representative to submit his information

TH - there is an outstanding fine of \$500

CS - *request payment of \$500 fine*

RG - *second – carries unanimously*

**CS – not present**

25) Discussion: Meeting Minutes and Decisions August 25, 2014 and September 15, 2014

AB - *accept minutes for decisions for 8/25/14*

RG - *second – carries unanimously with MB abstaining*

MB - *accept the minutes and decisions from 9/15/14*

GD - *second – carries with RG and AB abstaining*

- End of Meeting -

Matters not reasonably anticipated 48 hours in advance of meeting:

- 6-13-19 Uncas Avenue, Oak Bluffs (V14-044)

EXHIBITS:

- Acton Town Hall, Temporary Offices, 33 Nagog Park, 2<sup>nd</sup> Floor, Acton (V14-241) - variance application and supplemental information
- LaFuici Dental Office, 11 East St., Middleton (V14-236) - variance application and supplemental information
- Pioneer Valley Performing Arts Charter Public School, 15 Mulligan Dr., South Hadley (V14-240) - variance application and supplemental information
- Two Three Zero, 230 Somerville Avenue, Somerville (V14-242) - variance application and supplemental information
- Nashawannuck Pong Promenade, Williston Avenue and Cottage Street, Eathampton (V14-231) - variance application and supplemental information'

- Siasconset Casino Fitness Building, 10 New Street, Siasconset (V14-238) - variance application and supplemental information
- St. Spyridon Food Bank, 102 Russell St., Worcester (C14-069 & V14-237) - variance application and supplemental information
- Boston Public Library, Johnson Building, 230 Dartmouth Street, Boston (V14-219) - variance application and supplemental information
- Newton City Hall, War Memorial Hall, 1000 Commonwealth Ave., Newton (V14-235) - variance application and supplemental information
- Berklee College of Music, 138-152 Mass. Ave., Boston (V14-239) - variance application and supplemental information
- West Meadow Plaza, Unit 1720, 180 Milk Street, Route 9 & 135, Westborough (V14-234) - variance application and supplemental information
- New Guest House, 17 Broad St., Nantucket (V14-232) - variance application and supplemental information; Plan dated 9/22/14, submitted Matt MacEachern
- Wellesley College Field House, 106 Central St., Wellesley (V14-140) - September 5, 2014 letter from Peter Zuraw noting that they are preparing a variance amendment to review the current needs of the building in regards to access
- Greater Plymouth Center for the Arts, 25 ½ Court Street, Plymouth (V14-042) - August 29, 2014 email from Robert Hollis, stating that the lift equipment did not fit once delivered; September 12, 2014 email from Robert Hollis with pictures of the lift installed
- New 4 family dwelling, 269 Emerson Street, South Boston (V13-321) - August 26, 2014 from Doug Stephano, architect
- 6-13-19 Uncas Avenue, Oak Bluffs (V14-044) - August 19, 2014 Sam Dunn wrote to the Board regarding the elevator installation; September 15, 2014 e-mail from Dunn requested amendment to use a vertical wheelchair lift instead
- Nappi's Restaurant and Shop & Go Convenience, 370-374 Salem St., Medford (C11-004 & V12-196) - September 17, 2014 submittal of pictures from Jean Thompson, Aide to Representative Paul Donato
- Commercial Building, 42 Merrimac Street, Newburyport (V13-276) – Exhibit 1 – AAB1-96; Exhibit 2 - packet of additional information; Exhibit 3 - certified scaled plot plan, done by certified surveyor; Exhibit 4 - CD with photographs and digital copy of submissions; EXHIBIT 5 - memorandum submitted by RF
- Schneider Center and Billings Hall, 106 Central Street, Wellesley (V14-141) - EXHIBIT 1 – AAB1-45
- Glass Factory Condos Parking, 169 Monsignor O'Brien Highway, Cambridge (C13-091) - EXHIBIT 1 – AAB1-34
- West Newton Cinema, 1296 Washington Street, Newton (C13-002) - Exhibit 1 - AAB1-15; Exhibit 2 - Boston Globe newspaper ads for West Newton Cinema movie show times; Exhibit 3 - packet of Globe advertisements for West Newton Cinema movie show times; Exhibit 4 - pictures of West Newton Cinema website; Exhibit 5 - copies of weekly schedules submitted by Bramante
- Natick Mews, 13 East Central Street, Natick (V14-156) - Exhibit 1 - AAB1-20



